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**January 25, 2007**

**OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: February 2, 2006

Case Number: TSO-0353

This Decision concerns the continued eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored at this time.

**I. Background**

The individual is employed by a DOE contractor and held a security clearance at the contractor's request. The individual informed DOE of an alcohol-related arrest in June 2004. In order to resolve the security concern arising from the arrest, DOE conducted a Personnel Security Interview (PSI) with the individual in September 2004. The PSI did not resolve the concern, and in July 2005, a DOE consultant-psychiatrist evaluated the individual. The psychiatrist could not make a psychiatric diagnosis, but opined that the individual had been a user of alcohol habitually to excess, without adequate evidence of rehabilitation or reformation.

In December 2005, DOE suspended the individual's access authorization and informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his continued eligibility for access authorization. Notification Letter (December 14, 2005). The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (j) (Criterion J). The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. 10 C.F.R. § 710.8 (j). In this regard, the Notification Letter cites the opinion of the DOE consultant-psychiatrist that the individual has been a user of alcohol habitually to excess and does not show signs of adequate rehabilitation or reformation.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call his wife, his family doctor, his counselor, his second-level manager and two friends as witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents submitted by the individual shall be cited as "Indiv. Ex."

## **II. Analysis**

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored at this time because I cannot conclude that such a restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

### **A. Findings of Fact**

The individual began drinking around age 16, when he would drink two beers every two weeks with friends. PSI at 46. In 1972, at age 18, he increased his alcohol consumption to one six pack two or three times per month. *Id* at 62. In 1972, he was arrested for driving

while intoxicated (DWI) and ordered to attend DWI school. Ex. 22. In 1974, he was arrested for DWI again and received a fine and community service. *Id.* Around age 22 he was still drinking one six pack a couple of times a month. In 1979, he began working for a DOE contractor and was granted a clearance. Ex. 19; Ex. 9 (Report) at 4. In 1983, he was again arrested for DWI and spent the night in jail. Tr. at 77; Ex. 3 at 3. However, the charge was reduced to a first offense, and he attended DWI school. Ex. 17. That arrest was deemed to be sufficiently mitigated in a Special Security Lecture and the individual was allowed to retain his clearance. Report at 4.

In June 2004, the individual visited a casino with his wife and some friends. He drank two beers at his home before leaving for the casino, and then drank four more beers at the casino, all in a four to five hour period. On the way home, the police stopped him at a roadblock, and he failed a sobriety test and breathalyzer test. The breathalyzer recorded his blood alcohol content at 0.11, over the legal limit for that state. Ex. 14. The individual did not think he was impaired at the time. PSI at 39. He immediately reported his arrest to DOE security upon his return to work. The individual asked a friend who was also a manager at the DOE facility what he should do next, and the manager recommended that the individual contact the EAP program. The EAP counselor referred him to a local hospital with a group therapy program for counseling. The hospital counselor administered two alcohol assessment tests, but the test results were inconclusive in detecting an alcohol problem. The individual decided not to take a third test, because he felt they were trying to find a problem. Ex. 23 (PSI) at 113-116. He also decided against attending their outpatient program because he was caring for his ailing mother and felt that he could not commit the time. Tr. at 82. He returned to the EAP program for help, and met with an EAP counselor two or three times for half an hour, with his last appointment around October 2004. Ex. 3 at 2. DOE conducted a PSI in February 2005 to discuss his alcohol consumption. Ex. 25. During the PSI, the individual stated that he continued to drink alcohol, usually one or two beers within an hour, once every three weeks. PSI at 82-85. He stated that none of his friends or family ever told him he had a problem with alcohol. PSI at 92-93.

In July 2005, a DOE consultant-psychiatrist interviewed the individual for approximately one and one-half hours and completed a report of the interview for the record. Ex. 9 (Report). In his evaluation report, the psychiatrist concluded that the individual met the criteria for alcohol abuse between June 2003 and June 2005, but that he no longer met the criteria at the time of the evaluation (i.e., 12 months had passed with no evidence of positive criteria).

The psychiatrist also found that the individual was a user of alcohol habitually to excess from 1971-1972, 1973-1979, and June 2003-June 2004, based on the psychiatrist's calculation that the individual was intoxicated at least four times during each of those years.

In fact, the individual told the psychiatrist that he drank 11 beers in the week prior to their meeting, four each on Friday and Saturday, and three on Thursday. The individual told the psychiatrist that between June 2003 and June 2004, he drank approximately eight beers in a five to five and one half hour period almost every other weekend. Report at 8. The psychiatrist concluded that the individual gave some vague answers and was somewhat evasive in describing his alcohol use history. *Id.* at 11. The psychiatrist found that the individual, who continued to drink alcohol, did not present adequate evidence of rehabilitation or reformation. *Id.* at 13. In order to show adequate

evidence of rehabilitation, the DOE psychiatrist recommended in his report that the individual either: (1) attend Alcoholics Anonymous (AA) with a sponsor at least once a week for a minimum of 100 hours in a year and abstain from alcohol for two years; or (2) complete a six-month alcohol treatment program and abstain for three years. *Id.* at 13-14. In order to demonstrate reformation, the psychiatrist recommended that the individual abstain for five years, or abstain for two or three years if he attends one of the two rehabilitation programs. *Id.* at 14.

After the individual received the Notification Letter in December 2005, he returned to the EAP program for guidance. An EAP counselor recommended that the individual attend counseling, and he began seeing a counselor in private practice in January 2006. *Indiv. Ex. H.* He attends bi-monthly sessions with the counselor. In March 2006, the individual agreed to participate in a one-year recovery agreement that required intensive outpatient alcohol treatment, weekly AA meetings, a monthly meeting with the EAP counselor and monthly drug screening. By May 2006, the individual had attended four AA meetings, five meetings with the EAP counselor, and had two negative drug screens. *Indiv. Ex. D.*

## **B. DOE's Security Concerns**

The excessive use of alcohol raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Hearing*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). In this case, a DOE psychiatrist opined that the individual was a user, in the past, of alcohol habitually to excess. The individual also has a history of alcohol-related arrests. Therefore, DOE's security concerns are valid and the agency has properly invoked Criterion J in this case.

## **C. Hearing Testimony**

### **1. The DOE Psychiatrist**

The DOE psychiatrist testified at the beginning of the hearing that he had reviewed the individual's file prior to the July 2005 interview. *Tr.* at 10. According to the DOE psychiatrist, the individual met two criteria for alcohol abuse from 1989 to 2004. *Tr.* at 12-13, 16-17. Even though the individual's arrests were more than one year apart and three were over 20 years old, the psychiatrist found that the individual still met the DSM-IV qualifications for alcohol abuse because of his legal problems --a pattern of alcohol-related arrests from 1989 to 2004. *Id.* at 12, 15. The psychiatrist also found that the individual drank habitually to excess from June 2003 to June 2005. *Id.* at 10-13. The individual was still drinking alcohol at the time of the interview, and did not think that he had an alcohol problem. *Id.* at 11. In order to show adequate evidence of rehabilitation, the DOE psychiatrist recommended that the individual attend Alcoholics Anonymous (AA) for 100 hours and abstain from alcohol for two years, or attend a six-month alcohol treatment

program and abstain for two years. *Id.* at 13-14. In order to show reformation, the individual must abstain for five years or he could abstain for three years if he attended a rehabilitation program. *Id.* at 13.

## **2. The Individual's Counselor**

The individual's counselor testified that he held a master's degree in counseling and had been in private practice for 14 years. Tr. at 60-61. See also Indiv. Ex. F. He began seeing the individual professionally in January 2006--weekly until April 2006, and then every two weeks. Tr. at 65. He diagnosed the individual as suffering from alcohol abuse at various times in his life. *Id.* at 58, 69. His treatment plan for the individual is to continue their sessions. He has not told the individual to abstain from alcohol but stated that the individual will do whatever is required to maintain his clearance and job. According to the counselor, the individual has an "excellent prognosis," and the counselor's job is to monitor his behavior for any future problems with alcohol. The counselor runs a weekly aftercare group that recently had an opening, and offered to accept the individual into that group if the individual commits to go. Attendance at that group could substitute for attendance at AA, which the individual did not like. Tr. at 71. However, the counselor testified that even without AA or aftercare, he feels that ongoing professional monitoring of the individual and applying "preventive measurements" is sufficient to treat his alcohol problem. *Id.* at 72.

## **3. The Individual's Wife**

The individual's wife of 29 years testified at the hearing. Tr. at 74. She was aware of all four of the individual's alcohol-related arrests. She described her husband as a social drinker who typically would drink two to three beers on a weekend. *Id.* at 75. However, she has not seen him drink since December 2005, 6 months prior to the hearing. She was with her husband on the night of the June 2004 DWI arrest and saw him drink two 16-ounce beers that night. She did not think he was intoxicated that night. *Id.* at 77. The individual's wife admitted that she continues to drink alcohol and to keep alcohol in their home, but that the individual is not bothered by others drinking around him. Her husband saw his family physician in September 2005 regarding his alcohol usage and began treatment in January 2006 with the counselor. *Id.* at 83. She stated that during the treatment, the individual has learned a lot and acknowledged alcohol abuse. *Id.* at 84. She attended one counseling session with her husband and found it helpful. However, neither she nor her husband believes that he has an alcohol problem. *Id.* at 80, 83.

## **4. Other Witnesses**

The individual's family physician testified that he has known the individual for 10 years and has never seen any alcohol-related physical problems. Tr. at 11-12, 18. In January 2006, the doctor referred the individual to intensive outpatient counseling and had not seen him since then. Tr. at 16. Three colleagues testified. All stated that the individual was a good employee and that they had never seen any signs of excessive use of alcohol on the job. One colleague also socializes with the individual once or twice a month, and had not seen

the individual drink since December 2005. Tr. at 44. This witness also knew that the individual has been in the EAP program for a few months.

## **5. The Individual**

At the hearing, the individual testified that he does not feel that he has a problem with alcohol, but admits that he has abused alcohol. Tr. at 88. He never considered his previous alcohol use a problem. *Id.* He described his June 2004 DWI arrest and said that after the arrest he did not drink and drive. *Id.* at 97. He went to EAP immediately after and was referred to a local hospital for diagnosis and treatment. He took two verbal tests at the hospital, but declined to take the third when the first two were inconclusive. He felt that they were trying to prove that he had a problem. *Id.* at 106. No one has told him to stop drinking, although his counselor recommended it. *Id.* at 98. In December 2005, after a trip to Las Vegas, he went to speak to someone at EAP. *Id.* at 100. That person suggested attending a program that met three times per week, but he said that as caretaker for his ailing mother, he could not make that time commitment. Then the EAP psychiatrist accused him of making excuses for not attending the program, and he became angry and decided to abstain. *Id.* at 100-101. He then went to his family doctor, who referred him to counseling. *Id.* at 103. He stated that he had his last drink in December 2005. *Id.* at 96.

The individual is not sure if he will continue sessions with the counselor, and argues that he is fine. Tr. at 109-110. He is, however, willing to attend as long as the counselor recommends. *Id.* at 110. He attended four session of AA but refused to return because he did not relate to the problems of the other attendees, and he did not like the spiritual aspect of the program. *Id.* at 112. Since March 2006, he also sees an EAP counselor once a month. *Id.* at 113. The individual was not sure if he will drink again, but he does not have the urge to drink. *Id.* at 114.

After hearing all of the testimony, the psychiatrist did not change the opinion that he expressed in the Report completed after the July 2005 evaluation. The psychiatrist maintained that the individual used alcohol habitually to excess and suffered from alcohol abuse in the past and does not show adequate evidence of rehabilitation or reformation. He further concluded that with four DWIs, the individual was probably alcohol dependent, even though the psychiatrist could not diagnose him as such. He attributed that to the fact that a “diagnosis of alcohol dependence is extremely difficult to make when there is denial, minimization, self-deception, rationalization . . . .” Tr. at 127. Alcohol abuse, on the other hand, has more objective criteria, and four alcohol-related legal problems clearly reflect the existence of alcohol abuse at different times in the individual’s past. *Id.* at 127-129. The psychiatrist was not convinced that the individual would not drink habitually to excess over the next five years. He stated that the individual has not come close to meeting his recommendations for rehabilitation or reformation. *Id.* at 131. The individual has not completed any AA program or intensive outpatient treatment nor has he committed to abstinence. *Id.* at 132. According to the psychiatrist, the individual cannot be rehabilitated without the benefit of group therapy. *Id.* at 139.

#### **D. Evidence of Rehabilitation and Reformation**

At the time of the hearing, the individual had attended four AA meetings, approximately 15 counseling sessions, and had abstained from alcohol for six months. Two witnesses corroborated his period of abstinence. His counselor asserts that the individual has an excellent prognosis for avoiding relapse into any alcohol problems. The psychiatrist, on the other hand, maintains that the individual has not presented adequate evidence of rehabilitation or reformation from drinking alcohol habitually to excess in the past.

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, the psychiatrist found that the individual did not present adequate evidence of rehabilitation or reformation. The psychiatrist argues that there is a big risk of relapse without treatment, given the individual's level of denial and pattern of alcohol-related legal problems. On the other hand, the individual's counselor contends that the individual did suffer from alcohol abuse in the past, but has an excellent prognosis for rehabilitation or reformation with continued professional monitoring.

After evaluating the evidence in this case, I find that the individual has not adequately mitigated the security concerns of Criterion J. 10 C.F.R. § 710.8 (j). To his credit, there is no evidence in the record to dispute his testimony that he has abstained from alcohol for six months. The individual now admits that he suffered from alcohol abuse in his past. At first glance the individual's alcohol problem may appear mitigated by the fact that three of his four DWIs occurred over 20 years ago. Further, there is no current psychiatric diagnosis of an alcohol problem. However, I have been persuaded by the testimony of the psychiatrist and the following factors: (1) the sheer number of alcohol-related arrests, which outweighs any mitigating effect of the age of the arrests, (2) the minimization of his alcohol problem, both by the individual and his wife, (3) the absence of recommended group therapy from his current alcohol treatment program, and (4) hearing testimony that the individual's wife continues to drink and keep alcohol in their home. The individual's arguments that he is just an average drinker and does not have a problem with alcohol are seriously weakened by the evidence of four DWIs in the record. He attended DWI school twice, and still had further alcohol-related arrests. Despite these arrests, he did not stop drinking until he got mad at an EAP psychiatrist who accused him of avoiding treatment. He then began treatment only after his security clearance was suspended, but did not attend group therapy. Even though he did not like the spiritual aspect of AA, he refused to attend a secular treatment because of his schedule. The individual has an increased risk of relapse as he continues to socialize with friends and family members who drink alcohol.

Therefore, based on the above, I agree with the psychiatrist that DOE's valid security concerns are still present. Thus, in view of Criterion J and the record before me, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find

that the individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye  
Hearing Officer  
Office of Hearings and Appeals

Date: January 25, 2007